



**National Cable & Telecommunications Association**

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March 7, 2011

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and  
Technology  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lee Terry  
Vice Chairman  
Subcommittee on Communications and  
Technology  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairmen Upton and Walden and Vice Chairman Terry:

Thank you for your letter of March 4, 2011 regarding the FCC's adoption of the FCC's "network neutrality" Order. My answers to your questions follow:

1) Do you believe the rules were necessary?

NCTA has long asserted that such rules were a solution in search of a problem. I further believe that the entire broadband industry, competing as it does for the right to serve customers, has every incentive to conduct its business in a way that accords with the principles embedded in the FCC's Order.

2) Do you believe it is equitable that the rules apply to you but not the web companies you compete with?

Although the recent history of net neutrality, regardless of Administration, has assumed a focus only on Internet Service Providers, the very same issues arise in many different ways across the Internet ecosystem. Thus, NCTA has supported a light regulatory touch on broadband services under Title I and supports a framework that recognizes that distinctions among carriers, the edge of the Internet, and among technology platforms are increasingly archaic. We would much rather see (and believe it would be more equitable to have) a light regulatory touch for everyone in the Internet ecosystem, than a heavy and counterproductive regulatory regime on part or all of the Internet ecosystem.

3) Do you believe the order provides certainty?

I believe it can provide more certainty, but the ability of any FCC to provide certainty depends almost entirely on how it is implemented and enforced. Starting with the Bit Torrent case, which was ultimately overturned in court, through various pronouncements of what the FCC's authority was or was not in this space, the prevailing marketplace condition for the last several years has been one of uncertainty. No company or industry really knew what might be viewed as impermissible conduct, or how the FCC might enforce complaints brought before it or on its own initiative. The plain reading of the Order, coupled with some regulatory humility, should therefore provide greater certainty than the status quo. But I have no doubt that there will be efforts to inject more uncertainty. For example, Level 3 and others have recently mounted efforts to expand the plain reading of the Order in order to drag the FCC into disputes that are properly left to marketplace negotiations. Appropriately, these efforts were met by a clear and helpful statement from Chairman Genachowski that the Order did not cover such disputes. We hope and expect that the Chairman and the Commission will quickly disabuse any others that seek to expand the scope of the Order and thereby create uncertainty regarding its meaning or applicability.

4) Do you believe the order will help the economy?

I believe the Order as finally adopted largely codifies the broadband Internet access providers' current conduct, which doesn't change the economic status quo, whether in terms of investment or job creation. Against a backdrop of uncertainty mentioned in my answer to question 3, the Order's plain language minimizes the overhang on investment decisions for new and innovative services that are currently deployed, and thus, if implemented and enforced modestly, should promote continued investment and job creation. By contrast, if implemented and enforced in ways that are more expansive than the plain language of the Order supports, there could certainly be an adverse economic impact by chilling the willingness to deploy these new services.

5) Do you believe the order will create a significant net increase in jobs?

My answer to question 4 applies to this as well.

6) Do you believe the order will encourage your members to invest to expand broadband availability or otherwise promote broadband deployment?

As I said in my answer to question 4, removing an overhang of uncertainty should promote continued investment. More particularly, the Order's recognition that new business models, such as usage based pricing, are appropriate and not covered by the Order's rules, is an important pro-investment signal that these rules cannot be read to put continued investment into the deployment of broadband networks at risk, and would encourage NCTA members to continue to invest in broadband availability and deployment.

7) Do you support the FCC order or was it just better than the FCC's other proposals?

NCTA supports the FCC order because: 1) it largely codifies the status quo practices to which the industry has voluntarily committed; 2) it contains helpful clarifying language around such issues as what constitutes "reasonable network management;" 3) it provides greater certainty about our ability to manage and invest in our broadband services today and those we may deploy in the future; and 4) the alternative of Title II regulation (which had three likely FCC votes in support and was the only likely alternative), with the attendant risks of unbundling and rate regulation, presented a stark and much worse risk to continued investment and job creation. I believe the Order, reached after months of negotiation and compromise, represented a good faith effort on the part of Chairman Genachowski and his staff to accomplish those goals and avoid those risks.

I appreciate your and the Committee's interest in these very important issues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'KLS', with a long horizontal stroke extending to the right.

Kyle McSlarrow

cc: The Honorable Henry Waxman, Ranking Member

The Honorable Anna Eshoo, Ranking Member  
Subcommittee on Communications and Technology